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No. 111 Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff-Intervenor,

v.

STATE OF NEW YORK,

Defendant.

MOTION OF THE STATE OF MARYLAND FOR LEAVE TO FILE COMPLAINT IN INTERVENTION; COMPLAINT IN INTERVENTION; AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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October 30, 1990

BEST AVAILABLE COPY

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STATE OF DELAWARE,

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STATE OF TEXAS,

v. *Plaintiff-Intervenor,*

STATE OF NEW YORK,

Defendant.

MOTION OF THE STATE OF MARYLAND FOR LEAVE TO INTERVENE AND TO FILE COMPLAINT AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 9 of the Rules of the Supreme Court, the State of Maryland, a sovereign state of the United States of America, by and through its Attorney General and its undersigned Counsel, move this Court for an order permitting the State of Maryland to intervene as a Plaintiff in the above-entitled case and permitting its proposed Complaint in Intervention, attached hereto, to be filed. In support of this motion, and as more fully set forth in its Brief in Support of

Motion for Leave to File Complaint in Intervention, the State of Maryland alleges as follows:

I.

1. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property held by securities brokerage firms incorporated in Delaware, referred to by Delaware as "Escheatable Property of Unknowns."

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master.

3. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention. Texas, like Delaware, raised the issue as to which state is entitled to claim and take possession of "Escheatable Property of Unknowns," which it referred to as "Excess Receipts." The Texas complaint also made subject to this suit certain additional unclaimed intangible personal property held by clearinghouses for the settlement of trades in securities, and unclaimed principal and interest payments on state and municipal obligations ("Additional Excess Receipts").[1] On October 12, 1989, Texas filed a Motion for Leave to File Amended Complaint in Intervention, and an Amended Complaint In Intervention.

---

[1] The terms "Excess Receipts" and "Additional Excess Receipts" are defined in the accompanying Brief in Support of Motion for Leave to File Complaint in Intervention as well as in the Complaint in Intervention filed by the States of California, Michigan, Nebraska, Ohio, and Rhode Island which is incorporated by reference in the accompanying Complaint in Intervention.

4. On April 21, 1989, the States of Alabama, Hawaii, Illinois, Indiana, Kansas, Louisiana, Montana, Nevada, Oklahoma, South Dakota, Utah, and Washington, and the Commonwealths of Pennsylvania ("Alabama, *et al.*") filed a Motion for Leave to File Complaint in Intervention, a Complaint in Intervention, and a Brief in Support of Complaint in Intervention.

5. On November 17, 1989, the States of California, Michigan, Ohio, Nebraska, and Rhode Island (the "Designated States") filed a Motion for Leave to File Complaint in Intervention, a Complaint in Intervention, and a Brief in Support of Motion for Leave to File Complaint in Intervention.

6. On various dates, the States of Arizona, Connecticut, Idaho, New Mexico, South Carolina, Tennessee, Virginia, and Wisconsin and the District of Columbia each filed a motion for leave to file a complaint in intervention and a proposed complaint substantively identical to that of Texas, except for the District of Columbia which advanced the Texas position as well as the position advanced by the Designated States.

7. On various dates, the States of Arkansas, Florida, Iowa, Mississippi, Missouri, New Hampshire, New Jersey, North Dakota, West Virginia, and Wyoming have filed a motion for leave to file a complaint in intervention and a proposed complaint substantively identical to that of Alabama, *et al.*

8. On November 1, 1989, the Special Master issued "Litigation Management Order No. 1," dated as of October 18, 1989, in which, in paragraph 8, he stated:

> States considering intervention are requested to make a prompt determination of their plans, such that motions for leave to intervene can be filed thirty (30) days from the date of this order [October 18, 1989]. Prospective intervenors meeting this timetable will be treated on the same scheduling track as

> parties presently participating, with only modest adjustments of schedule to accomodate their commencing active participation. Parties not meeting this timetable will be required, absent compelling reasons, to fit in to ongoing discovery and motions without disruption of that scheduling track.

9. In Discovery Order No. 5, dated March 16, 1990, Litigation Management Order No. 2 (part B, page 3), dated July 16, 1990, and Discovery Order No. 13, dated August 13, 1990, the Special Master modified and extended the discovery schedule. In part B of Litigation Management Order No. 2, the Special Master established a schedule for the filing of "dispositive motions directed at certain positions."

10. As specifically and particularly set forth in the proposed Complaint in Intervention, the State of Maryland claims a portion of the Excess Receipts and Additional Excess Receipts (collectively "Unclaimed Funds") which constitute the unclaimed property that is the subject matter of this controversy. The State of Maryland claims a portion of the Unclaimed Funds determined by an allocation among the states in proportion to the commercial activities, between the brokerage firms or other sellers of securities and customers whose last known addresses were, or should be presumed to have been, in the respective states, which gave rise to the Unclaimed Funds at issue (the "Allocated Amount").

11. The amount of Unclaimed Funds in issue in this litigation that the State of Maryland is entitled to claim is presently unknown, but, upon information and belief, is substantial.

12. The decision of the Court in this action will conclusively determine the right of the State of Maryland to claim and take possession of these Unclaimed Funds. If the position of either Delaware or New York or Texas is accepted, the State of Maryland may be forever precluded from taking possession of some or all of the unclaimed property as to which

there are conflicting claims. Because Delaware, New York, and the State of Maryland each asserts conflicting claims to the subject Unclaimed Funds, and no other party is asserting Maryland's right to its Allocated Amount, the interests of the State of Maryland are not adequately represented by existing parties.

13. The State of Maryland's Complaint in Intervention is substantively identical to the Complaint in Intervention filed by the Designated States, except that it seeks payment to Maryland of Maryland's Allocated Amount.

14. Intervention by the State of Maryland will not delay the progress of this case, since it is prepared to comply with the schedule specified in Litigation Management Order Nos. 1 and 2. The State of Maryland agrees to "fit in to ongoing discovery and motions" without disruption of the schedule established by the Special Master. It expects to file jointly with the Designated States and its counsel is already participating in the case as counsel for Michigan and Ohio. Intervention by the State of Maryland will aid in the resolution of the factual and legal issues presented by this litigation and will allow the various positions of the states to be resolved in a single proceeding and will avoid a multiplicity of lawsuits.

15. In *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71 (1961), this Court recognized the difficulties inherent in resolving controversies between different states over their respective rights to take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. *See also, Pennsylvania v. New York*, 407 U.S. 206 (1972).

16. Based on the foregoing, and the arguments set forth in the attached Brief in support of this Motion, the State of

Maryland is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), or, in the alternative, in the exercise of the Court's discretion pursuant to Rule 24(b), Federal Rules of Civil Procedure.

WHEREFORE, the State of Maryland requests that it be permitted to intervene as a party plaintiff in this case to assert the claims set forth in the attached Complaint in Intervention.

Respectfully submitted,

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STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

v. *Plaintiff-Intervenor,*

STATE OF NEW YORK,

Defendant.

COMPLAINT IN INTERVENTION OF THE STATE OF MARYLAND

The State of Maryland, by and through its Attorney General and its undersigned Counsel, files this Complaint in Intervention and alleges as follows:

1. The State of Maryland incorporates by reference as though fully set forth herein Paragraphs 1 through 11 and the Prayer for Relief of the Complaint in Intervention of the States of California, Michigan, Ohio, Nebraska, and Rhode Island, except for adding the State of Maryland to the Plaintiffs in Intervention (the "Designated States") named in Paragraph 6 and adding to footnote 4 a citation to the State of Maryland's unclaimed property laws set forth in Exhibit A to this Complaint in Intervention.

Respectfully submitted,

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EXHIBIT A TO COMPLAINT IN INTERVENTION

UNCLAIMED PROPERTY AND ESCHEAT LAWS OF THE STATE OF MARYLAND

MARYLAND — Maryland Uniform Disposition of Abandoned Property Act, Md. Code Ann. §17-101, *et seq.*

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STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

v. *Plaintiff-Intervenor,*

STATE OF NEW YORK,

Defendant.

BRIEF OF THE STATE OF MARYLAND IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

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STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

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STATE OF NEW YORK,

Defendant.

BRIEF OF THE STATE OF MARYLAND IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

On May 31, 1988, the Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and the State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed intangible personal property. On February 21, 1989, the Court granted the State of Texas' ("Texas") Motion for Leave to File Complaint in Intervention, asserting claims to portions of the same unclaimed property and similar types of property. On October 12, 1989, Texas filed a Motion for Leave to File Amended Complaint in Intervention, and an Amended Complaint In

Intervention. On November 17, 1989, the States of California, Michigan, Nebraska, Ohio, and Rhode Island filed a Motion for Leave to File Complaint In Intervention asserting their claims to portions of this unclaimed property to which they are entitled. Other states have filed similar motions for leave to intervene. The State of Maryland now seeks leave to intervene and to join in the Complaint in Intervention of the States of California, Michigan, Nebraska, Ohio, and Rhode Island so that it may assert its claims to the portion of this unclaimed property to which the State of Maryland is entitled.

STATEMENT OF THE CASE

This original action concerns certain intangible property generated by securities transactions and by the payments of dividends, interest and principal in cases where the address of the rightful owner of the intangible property is unknown. New York, Delaware and Texas have asserted rights to the property based upon conflicting theories. The States of California, Maryland, Michigan, Nebraska, Ohio, and Rhode Island (the "Designated States) have asserted and are asserting their rights to the property distributed to the claimant states "in proportion to the commercial activities of their residents" as this Court sought in *Texas v. New Jersey*, 379 U.S. 674, 681 (1965). Specifically, the Designated States assert that, in the circumstances of this case, if the addresses of the beneficial owners are unknown, the Allocated Amount of Unclaimed Funds held by brokerage firms and other intermediaries attributable to corporate and governmental issues is subject to the claim of each state where the commercial activities occurred which gave rise to the Unclaimed Funds. Other states have aligned themselves with Texas ("Texas, *et al.*") or with a group of states led by Alabama ("Alabama, *et al.*"). Both Texas, *et al.*, and Alabama, *et al.*, have asserted the theory set forth in the Texas Complaint and Amended Complaint.

The accompanying Complaint in Intervention incorporates by reference the Complaint in Intervention filed by the States of California, Michigan, Nebraska, Ohio, and Rhode Island which fully sets forth the entitlement of the Designated States to their share of the unclaimed property at issue referred to as "Excess Receipts" and "Additional Excess Receipts" (collectively, "Unclaimed Funds") as defined in the complaints filed by the State of Texas and the Designated States which comes into being and acquires its character as unclaimed property in the context of securities transactions.

The relevant portions of the unclaimed property laws of the State of Maryland are cited in Exhibit A to the proposed Complaint in Intervention of the State of Maryland.

I.

THE APPLICANT MEETS THE REQUIREMENTS FOR INTERVENTION

Intervention is proper because the State of Maryland has satisfied the requirements for intervention set forth in Rule 24(a)(2) of the Federal Rules of Civil Procedure[2] as incorporated in Sup. Ct. R. 9.2,[3] and is therefore entitled to intervene as a matter of right. The disposition of this action is likely, as a practical matter, to impair the ability of the State of Maryland to protect its interest in the disputed property in the absence of its intervention as a plaintiff.

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[2] Pursuant to Rule 24(a)(2), Fed. R. Civ. Pro., anyone who timely applies shall be permitted to intervene in the action:

> (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[3] Rule 9.2 of the Supreme Court directs that the Federal Rules of Civil Procedure, "where their application is appropriate, may be taken as a guide to procedure in original actions."

By this intervention, the State of Maryland claims a portion of the specific unclaimed property which constitutes the subject matter of this action. While the precise amount of the unclaimed property claimed by the State of Maryland is presently unknown, on information and belief, the amount is substantial.

The State of Texas has been permitted to intervene in the instant case, and the Special Master appointed by this Court has stated his intention to recommend that motions of all states seeking to intervene in a timely manner be granted. *See, Report of the Special Master on Motions for Intervention,* September 13, 1989; *Litigation Management Order No. 1,* October 18, 1989, *as amended.*

Because the laws of the State of Maryland are not identical to those of the other states and because it and the other Designated States are asserting a position distinct from those of Delaware, New York, Texas, *et al.*, and Alabama, *et al.*, and because no other party can or will assert a claim to Maryland's Allocated share, the State of Maryland has interests which are not adequately represented by existing parties. In fact, the absence of the State of Maryland might bar it from asserting claims to property to which it might otherwise be entitled. The State of Maryland therefore should be permitted to intervene as a matter of right.

Alternatively, the State of Maryland should be permitted to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure as a matter of discretion.[4] Permissive intervention is appropriate because, without the intervention of the State of Maryland, matters involving issues of fact and law common to those presently in this lawsuit, and involving potentially hundreds of millions of dollars, will of necessity

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[4] Pursuant to Rule 24(b), Fed. R. Civ. Pro., the Court may exercise its discretion and allow permissive intervention if an applicant's claim involves issues of fact or law common to those already present in the litigation and the intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

be decided for the State of Maryland by implication and without a complete presentation of its point of view on the issues. Additionally, the facts which the State of Maryland will rely upon in order to support its claim are either already before the Court or will inevitably be developed during the course of these proceedings. Clearly, the claim of the State of Maryland to the unclaimed property at issue involves questions of law and fact common to those already present in this litigation.

Intervention by the State of Maryland's motion is timely in light of the October 18, 1989, ruling of the Special Master that prospective intervenors filing motions for leave to intervene beyond thirty days following October 18, 1989, would be permitted to join the same scheduling track as presently participating parties. *Litigation Management Order No. 1, supra.* The State of Maryland does not seek to interject a new theory of the case, but, rather to join in the Complaint in Intervention previously filed by the other Designated States and to join the Designated States in their efforts to obtain a favorable resolution of this litigation. Maryland expects to file jointly with the Designated States and its counsel already is participating in this case on behalf of two of the other plaintiff-intervenor States, Michigan and Ohio. Thus, the proceedings will not be delayed by the granting of this motion and the rights of the other parties will not be prejudiced.

II.

THIS COURT'S PRECEDENTS CALL FOR INTERVENTION IN THESE CIRCUMSTANCES

Intervention is proper under the principles established in *Western Union Telegraph Co. v. Pennsylvania,* 368 U.S. 71 (1961). In that case, the Court recognized the difficulties inherent in resolving controversies among different states over their respective rights to claim and take possession of unclaimed intangible personal property, and concluded that

the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.*, at 79. *See also, Texas v. New Jersey*, 379 U.S. 674 (1965); *Pennsylvania v. New York*, 407 U.S. 206 (1972) (both allowing intervention of additional states in unclaimed property cases).[5] The State of Maryland seeks by this Intervention an opportunity to so present its claims.

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[5] In *Texas v. New Jersey*, leave for the State of Illinois to intervene was denied. Illinois claimed no interest in the property involved in the case. 379 U.S. at 677, n 6.

CONCLUSION

For the reasons state, the Motion of the State of Maryland for Leave to Intervene as a Plaintiff should be granted.

Respectfully submitted,

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*Counsel of Record
October 30, 1990

PROOF OF SERVICE

I, JAMES F. FLUG, certify that I am counsel of record for Plaintiff in Intervention, the State of Maryland, that I am a member of the Bar of the Supreme Court of the United States, and that on the 30th day of October, 1990, I served copies of the foregoing Motion for Leave to File Complaint in Intervention, on all parties required to be served by depositing such copies, first class postage prepaid, in the United States mail, addressed as follows:

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